

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

75-1252

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

-against-

JOSEPH DE SIMONE, and LOUIS TONANI,
Defendants-Appellants.

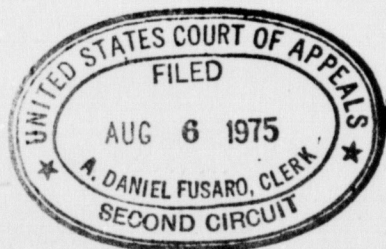
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APPELLANTS JOINT APPENDIX

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PAGINATION AS IN ORIGINAL COPY

D. C. Form No. 100
CRIMINAL DOCKET

75CR 155

7402 221
BRAMWELL J.

CLOSED

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.: DOUGHERTY
VS.	
JOSEPH DE SIMONE, a/k/a "Desi" De Simone	
LOUIS TONANI, a/k/a "Junkie" and "Richie"	for deft Tonani: Fred C. Stella
	For Defendant: De Simone:
	Jay Horlick

Did distribute cocaine

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
Fine,					
Clerk,					
Marshal,					
Attorney,					
Commissioner's Court,					
Witnesses,					

DATE	PROCEEDINGS
1/3/85	Before PLATT, J. - Indictment filed
1/6/75	Petition for writ of habeas corpus ad prosequendum filed
1/6/75	By BRAMWELL, J. - Writ issued, ret. 3/13/75
3-13-75	Before BRAMWELL, J - case called - defts & attys present - defts waive reading of the indictment and each enter a plea of not guilty - bail contd and case adjd to March 17, 1975 for trial.
-13-75	Petition for Writ of Habeas Corpus Ad Prosequendum filed. By BRAMWELL, J - Writ Issued, ret. 3-17-75. (TONANI)
14-75	Writ ret'd and filed - Executed. (TONANI)
7-75	Before BRAMWELL, J - case called - defts & counsels present - defts motion attaching the Authorization of Special Attorney, James Dougherty to prosecute this case - motion argued - decision reserved - Trial ordered - Selection of Jurors begun - Jurors selected and sworn - decision

75CR 155

DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
	reserved on motion - motion denied - trial contd to Mar. 18, 1975 @ 10:30 A.M.		
3-18-75	Before BRAMWELL, J - case called - defts & counsels present - trial resumed - Trial contd to Mar. 19, 1975.		
3-19-75	Before BRAMWELL, J - case called - defts & counsels present - trial resumed - trial contd to Mar. 20, 1975 at 10:00 am.		
3-20-75	Before BRAMWELL, J - case called - defts & counsels present - trial resumed - Trial contd to Mar. 21, 1975.		
3-21-75	Before BRAMWELL, J - case called - defts & counsels present - trial resumed - Hearing on whether deft Tonani was advised of his rights when he was arrested (Jury not present) trial contd to Mar. 24, 1975.		
24-75	Before BRAMWELL, J - case called - defts & counsels present - Trial resumed - hearing on Miranda question contd - motion to suppress statements made by Louis Tonani are denied - Trial contd to 3-25-75 @ 9:30		
3-25-75	Before BRAMWELL, J - case called - defts & counsels present - Trial resumed - Govt rests - Mr. Horlick moves to dismiss counts 1, 2, 3 & 4 as to deft De Simone etc. Motion denied - Mr. Stalla moves to dismiss counts 3, 4, 5 & 6 as to deft Tonani - motions denied - both defts rest - Trial contd to March 26, 1975 at 9:30 am.		
3-26-75	Before BRAMWELL, J - case called - defts & counsels present - trial resumed - alt. Juror #2 reported ill - order of sustenance signed (2, one for lunch and one for coffee etc) Trial contd to 3-27-75.		
3-26-75	By BRAMWELL, J - 2 Orders of sustenance filed.		
-27-75	6 stenographers transcript filed (pgs 1 to 1090)		
-27-75	Before BRAMWELL, J - case called - defts & counsels present - trial resumed - Order of sustenance signed - Jury enters courtroom at 4:55 PM and renders a verdict of guilty as follows: Deft De Simone guilty on counts 1, 2 & 3 and no verdict on count 4 - deft Tonani found guilty on counts 3, 4, 5 & 6 - Jury polled - defts motion to set aside verdict etc. motion denied - bail contd as to deft De Simone - deft Tonani bail set at \$25,000 surety bond - jury discharged - sentences adjd without date.		
-27-75	By BRAMWELL, J - 2 orders of sustenance filed.		
-28-75	Govts Trial Brief filed.		
-28-75	Govts Requests to Charge filed.		
17/75	Stenographers Transcript dated 3/26/75 filed		
5-7-75	Petition for Writ of Habeas Corpus Ad Prosequendum filed (TONANI)		
5-7-75	By BRAMWELL, J - Writ Issued, ret. May 16, 1975) TONANI		

CRIMINAL DOCKET

DATE	PROCEEDINGS
5-16-75	Before BRAMWELL, J - case called - sentences adjd to May 30, 1975 as to defts TONANI & DE SIMONE
5-30-75	Writ ret'd and filed - Executed (TONANI)
5-30-75	Before BRAMWELL, J - case called - defts present with attys - deft TONANI is sentenced to imprisonment for 6 years on count 3, 6 years on count 4; 6 years on count 5 and 6 years on count 6 - sentences on counts 4, 5 & 6 are to run concurrent with sentence imposed in count 3 - def't advised of his right to appeal by the Court. Deft De SIMONE sentenced to imprisonment for 7 years on count 1 plus special parole term of 5 years, 7 years on count 2 plus special parole term of 5 years and 7 years on count 3 - sentences in counts 2 & 3 are to run concurrent with sentence imposed in count 1. Deft advised of his right to appeal by Court. Bail contd.
5-30-75	Judgment & Commitment filed for both defts - certified copies to Marshal.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Brennell. J

SUPERSEDING
INDICTMENT

-----X
UNITED STATES OF AMERICA

-v-

JOSEPH DE SIMONE, a/k/a "Desi" De Simone
LOUIS TONANI, a/k/a "Junkie" and "Richie"

DEFENDANTS
-----X

Title 18, United States Code,
Section 894
Title 21, United States Code,
Sections 846, 841 (a)(1)

75 CR 155
7-4-75

THE GRAND JURY CHARGES:

COUNT ONE

In or during the month of February, 1974, within the Eastern District of New York, the defendant JOSEPH DE SIMONE, a/k/a "Desi" De Simone, unlawfully combined, conspired, confederated and agreed with Stephen Varga and Juanita Veldez, a/k/a Juanita Hernandez, both of whom are named herein as co-conspirators but not as defendants, and with diverse others to the Grand Jury unknown, to possess with intent to distribute and to distribute a Schedule II narcotic drug controlled substance, to wit, approximately five (5) ounces of cocaine.

[Title 21, United States Code, Section 846]

COUNT TWO

In or about February, 1974 within the Eastern District of New York, the defendant JOSEPH DE SIMONE, a/k/a "Desi" De Simone, knowingly and intentionally possessed with intent to distribute and distributed a Schedule II narcotic drug controlled substance, to wit, approximately five (5) ounces of cocaine.

[Title 21, United States Code, Section 841 (a)(1)]

COUNT THREE

From on or about February 1, 1974, up to and including the date of the filing of this indictment, within the Eastern District of New York, the defendant JOSEPH DE SIMONE, a/k/a "Desi" De Simone, and the defendant LOUIS TONANI, a/k/a "Junkie" and "Richie", knowingly combined, conspired, confederated and agreed together and with one another and with diverse others, to the Grand Jury unknown, to use extortionate means within the meaning of Section 891 (7) of Title 18, United States Code, to attempt to collect and to collect an extension of credit from Stephen Varga.

[Title 18, United States Code, Section 894]

COUNT FOUR

In or during the month of June, 1974, within the Eastern District of New York, the defendant JOSEPH DE SIMONE, a/k/a "Desi" De Simone, and the defendant LOUIS TONANI, a/k/a "Junkie" and "Richie", knowingly used and participated in the use of extortionate means to collect or attempt to collect an extension of credit from Stephen Varga, to wit, the use and express and implicit threats to use violence or other criminal means to cause harm to the person, reputation and property of Stephen Varga.

[Title 18, United States Code, Section 894]

COUNT FIVE

On or about September 6, 1974, within the Eastern District of New York, the defendant LOUIS TONANI, a/k/a "Junkie" and "Richie", knowingly used extortionate means to collect or attempt to collect an extension of credit from Stephen Varga, to wit, the use and express and implicit threats to use violence or other criminal means to cause harm to the person, reputation and property of Stephen Varga.

[Title 18, United States Code, Section 894]

COUNT SIX

On or about November 3, 1974, within the Eastern District of New York, the defendant LOUIS TONANI, a/k/a "Junkie" and "Richie", knowingly used extortionate means to collect and attempt to collect an extension of credit from Stephen Varga, to wit, the use and express and implicit threats to use violence or other criminal means to cause harm to the person, reputation and property of Stephen Varga.

[Title 18, United States Code, Section 894]

A TRUE BILL

FOREMAN

DAVID G. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

SIR:

PLEASE TAKE NOTICE that the within will be presented for settlement and signature to the Clerk of the United States District Court in his office at the U. S. Courthouse, 225 Cadman Plaza East, Brooklyn, New York, on the ____ day of _____, 19____, at 10:30 o'clock in the forenoon.

Dated: Brooklyn, New York,

_____, 19____

United States Attorney,
Attorney for _____

To:

Attorney for _____

SIR:

PLEASE TAKE NOTICE that the within is a true copy of _____ duly entered herein on the ____ day of _____, in the office of the Clerk of the U. S. District Court for the Eastern District of New York,

Dated: Brooklyn, New York,

_____, 19____

United States Attorney,
Attorney for _____

To:

Attorney for _____

Criminal

Action

No. _____

UNITED STATES DISTRICT COURT
Eastern District of New York

UNITED STATES OF AMERICA

—Against—

JOSEPH DE SIMONE, A/K/A "Desi" De Simone
LOUIS TONANI, A/K/A "Junkie" and "Richie"

SUPERSEDING INDICTMENT

DAVID G. TRAGER

United States Attorney,
Attorney for _____
EDM
Office and P. O. Address,
U. S. Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Due service of a copy of the within _____
_____ is hereby admitted.

Dated: _____, 19____

Attorney for _____

James W. Dougherty, Special Attorney
212-596-5776

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 -----X
4 THE UNITED STATES OF AMERICA :

5 -against- :

75 CR 155

6 JOSEPH DE SIMONE and :
LOUIS TONANI :

7 Defendants
8 -----X

9 225 Cadman Plaza, E.
10 Brooklyn, N.Y.
11 March 17, 1975

12 Oral Motion To Dismiss

13 Before: HON. HENRY BRAMWELL
14 District Court Judge

15 Joseph L. Benedetto
16 Acting Court Reporter

17 Appearances:

18 JAMES DOUGHERTY, Special Attorney
19 U.S. Department of Justice

20 JAY HOPLOCK, Esq.
21 26 Court Street
22 Brooklyn, N.Y.
23 Attorney for Defendant DeSimone

24 FRED C. STELLA, Esq.
25 189 Court Street
Brooklyn, N.Y.
Attorney for Defendant Tonani

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2 THE COURT: This is on the argument on the
3 motion.

4 Are you ready?

5 MR. HORLICK: Yes.

6 If your Honor please, we have a brought a
7 motion as to the question as to whether or not the
8 Special Attorney was specifically directed by the Attorney
9 General to prosecute cases before the grand jury and
10 before this Court.

11 On Friday, I was supplied by Mr. Dougherty
12 with a copy of designation and oath of office -

13 THE COURT: Could I get a copy of that, Mr.
14 Dougherty?

15 MR. DOUGHERTY: I'm sure your Honor has a
16 copy of that from prior arraignments. I don't have a
17 copy with me.

18 It's the same type of broad theory that was
19 involved in the Speno case.

20 MR. HORLICK: Judge, I can hand you my copy of
21 it.

22 THE COURT: Thank you very much.

23 (Whereupon, Mr. Horlick gave a paper
24 to the Court)
25

1
2 MR. HORLICK: If your Honor please, I have
3 already submitted, your Honor, in chambers, to you and
4 your Law Secretary, copies of, I believe, two opinions
5 from the Western District of Missouri dealing with
6 this question and I have in my possession, at this time,
7 an additional opinion of Judge Werker (phonetic spelling)
8 of the Southern District in New York and also dealing
9 with a similar question.

10 Judge Werker's opinion, I feel, is closer to
11 the point and more precise in its language than the two
12 broader opinions written in the Western District of
13 Missouri by Judge Oliver.

14 These cases deal with the question of whether
15 Section 2315 of Title 28 authorizes the Attorney General
16 to make broad designations of attorneys to prosecute
17 cases.

18 The statute specifically states the Attorney
19 General must make a specific appointment and a specific
20 direction to the individual to try the cases.

21 Judge Werker found that in his analyses of
22 cases and he went back to the original use of the
23 Special Attorney, I believe it was 1896 and the statute
24 was codified in 1906 but I think his opinion explained
25 that the use of the Special Attorney was for special

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2 cases where I believe the United States Attorney's
3 Office could not supply special attorneys in particu-
4 lar types of cases, which has been submitted to the
5 Court, including the one involved in the instant case
6 and show that the Attorney General's Office used
7 a formal designation in its broad language authority
8 to present cases and prosecute individuals in the juris-
9 dictions involved.

10 On this Friday, when I read the letter, I
11 found it was signed by Joseph T. Sneed (phonetic spelling),
12 apparently a Deputy Attorney General.

13 I don't know if he was particularly designated
14 by the Attorney General to authorize the employment of
15 Special Attorneys but in view of the language in the
16 United States against Giordano I would suggest that this
17 statute is not, on its face---I'm talking about Title 28,
18 Section 5510 of the United States Code--is not any differ-
19 ent.

20 The Attorney General was the designated individ-
21 ual who was authorized, his office of the Deputy Attorney
22 General, who typed in what appears to be his signature,
23 and definitely requires the Attorney General to make
24 the designation and that may not be done in this case.
25

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2 I addition, I would call the Court's atten-
3 tion to the point raised by Judge Werker (phonetic
4 spelling), in his opinion, in which he sets forth
5 the statutes and the meaning of the statutes is well
6 satisfied if the Attorney General designates a particu-
7 lar area of criminal activity or if the case be civil
8 activity, to be prosecuted by a Special Attorney.

9 I think it was Judge Werker's position that
10 if the designation were to be used in narcotic viola-
11 tions, organized crime violations or any particular
12 area of the criminal law, it must be specific enough
13 to satisfy the statutes designation.

14 The designation before the Court now is not
15 only the authority and power to go before the grand jury
16 in criminal matters but gives the United States Attorney
17 or Special Attorney authority to appear in civil matters
18 as well.

19 I respectfully urge the Court, especially in
20 view of the fact the statute of limitations has not run
21 in this case, to take the position advanced by Judge
22 Werker and Judge Oliver and dismiss the indictment
23 on the authority of Section 5510 and find that the
24 Special Attorney was not an attorney of the Government,
25

1
2 as set forth in the rules of the court with respect to
3 who may appear and present evidence before a grand jury
4 and I would move for the dismissal of the indictment
5 on those grounds.

6 Might I add, Judge, my co-counsel has joined
7 in this application. I don't know if he wishes to be
8 heard.

9 THE COURT: He may wish to be heard. Let him
10 argue separately.

11 MR. STELLA: So that it's on the record, I
12 would join in this application. I will ask the Court
13 to take that into consideration together with the mem-
14 orandum of law which I submitted to the Court on an earl-
15 ier date.

16 Judge, I joined in the application of Mr. Horlick
17 on the very same grounds, that the indictment in this
18 case be dismissed.

19 THE COURT: Thank you, counsel. I'll hear
20 Mr. Dougherty.

21 MR. DOUGHERTY: Your Honor, the letter that
22 you have before you was issued pursuant to a delega-
23 tion of authority by the Attorney General under "k" of
24 Chapter "I".
25

1
2 The pertinent sections in that subparagraph
3 are .55 and .60 and I think a fair reading of those
4 sections lead to the inevitable conclusion that the
5 Deputy Attorney General Snead (phonetic spelling) was
6 properly designated in his designation of picking me
7 as a Special Attorney was pursuant to proper authority.

8 I submit further that even absent those sec-
9 tions that there is an implied authority in the Attorney
10 General to designate other officers in the Department
11 of Justice to perform the same functions and duties
12 that are inherent in his office and that absent any
13 evidence to the contrary, that the Court can assume and
14 that an inference is available to be drawn as to the
15 conduct by the Deputy Attorney General in appointing
16 me a Special Attorney was pursuant to a lawful delega-
17 tion of authority.

18 Secondly, counsel has referred to the Giordano
19 case which I submit is not applicable, that that has
20 been so found to be the case notably by Judge Pollack
21 (phonetic spelling) in the United States against Brown
22 because the statute in question relates to a limited
23 circumscribed authority, whereas, Section 5510-A is
24 phrased in such a fashion as to allow a very broad un-
25

1
2 restricted delegation of authority by the Attorney
3 General.

4 As far as the requirement that a specific
5 designation be made by the Attorney General, I think the
6 letter, itself, satisfies that requirement and any argu-
7 ment that in addition to the letter for, namely, as
8 Special Attorney that there should be some listing of
9 statutes or some general area that I'm authorized to
10 venture into, I think that requirement - and I disagree
11 with Judge Werker (phonetic spelling) on this point -
12 and I submit any specific enumeration of statutes or
13 particular area of investigation does not render the
14 designation of Special Attorney unlawful.

15 Section 509 of Title 28, United States Code,
16 gives the Attorney General all the powers and to the
17 attorneys of the Department of Justice, including the
18 United States Attorney.

19 In a case cited by Judge Werker - the name of
20 the case I don't have - but it's contained in Judge Werker's
21 opinion - recognized the Attorney General as the central
22 authority for the administration of justice and recognized
23 that the Attorney General could even usurp the functions
24 of the United States Attorney.
25

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2 Finally, I submit that Section 5510, itself,
3 is broad and ~~unrestrictive~~ and under the terms of that
4 statute, the letter of appointment that your Honor
5 has before you conforms to the letter and the spirit
6 of the statute.

7 In summary, I only wish to submit the many
8 cases that have dealt with this issue since Judge Werker's
9 (phonetic spelling) opinion, including opinions of Judge
10 Pollack, Judge Tierney, Judge Frankel, Judge Judd and
11 Judge Dooling and Judge Platt in this District and
12 Judge Marsh in the Western District and an assortment
13 of other cases in the United States connected with the
14 issues, where the letter of appointment was identical
15 to the letter appointment me and they have found not only
16 was there a lawful delegation of authority by the Attorney
17 General but that lawful delegation of authority was law-
18 fully exercised and the letters of authority appointing
19 the individuals as Special Attorneys conforms to the
20 language of Section 5510-A and to the construction of
21 the statutes.

22 I submit the motion to dismiss should be
23 denied.

24 THE COURT: Anything further?

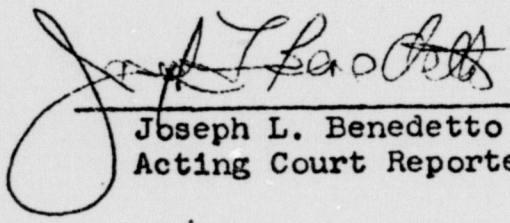
25 MR. HORLICK: No, your Honor.

1
2 THE COURT: I'll reserve decision. We will
3 adjourn to 2:00 p.m. to pick a jury and also for the
4 prisoner to get clothes.
5

6 CERTIFICATE

7 The foregoing 10 pages, including this page,
8 is a true and accurate transcript of the oral motion to
9 dismiss in the matter of the United States of America
10 against Joseph DeSimone and Louis Tonani held before
11 the Hon. Henry Bramwell on March 17, 1975 at the United
12 States District Court for the Eastern District of New
13 York, filed under index number 75 CR 155, as transcribed
14 from my shorthand record.

15 I further certify that I am not related to
16 any of the parties in said matter and have no financial
17 interest in same, having acted in the capacity of Acting
18 Court Reporter only.

19
20 
21 _____
22 Joseph L. Benedetto
23 Acting Court Reporter
24
25

1/2pm 2

Q What was the reason for your going to the hospital?

A Personal problems and physical problems.

Q How long a period of time were you confined?

A 8 weeks.

Q Would you say, that in your layman's terms it was a mental breakdown?

A No, I felt I needed a rest and to get away from things around me at the time.

Q Were you treated in the hospital?

A They used to give me one pill.

Q What kind of pill was it?

A I don't know.

Q Did the doctors ever tell you what was wrong with you or why you were being treated in the hospital?

A They told me that I don't belong there, that I should have went home.

Q And you stayed 8 weeks.

Where have you been living since the period of time that this case has been pending, since you originally made the complaint?

MR. DOUGHERTY: Objection.

THE COURT: Sustained. Do not answer that question.

1 Varga-cross

2 Q Is it true, sir, that you have been living
3 at Government expense?

4 A No, sir, not I.

5 Q That the Government set up a place for you to
6 live?

7 A No, sir.

8 THE COURT: Counsel, when there has been an
9 objection and you continue in the same area, that is
10 not proper.

11 MR. HORLICK: I did not ask him where it was.

12 THE COURT: You are going right in the same
13 area.

14 Q Mr. Varga, during the period of time Juanita
15 was making the drug sales, did you and she split up any
16 of the money that came in?

17 A None whatever.

18 Q What happened to those monies?

19 A I turned them over to Desi.

20 Q That you collected in the apartment? And
21 then turned it over? What did you do with it?

22 A When she come back she used to turn the
23 money over to me and the next day when I used to go to
24 Brooklyn, I gave it to him.

25 Q When she turned the money over to you, did

Varga-cross

money up?"

MR. DOUGHERTY: Objection.

THE COURT: Sustained. Do not answer it.

Q Did you have any conversation with her about how you could pay for the drugs, prior to your receiving them?

A No.

Q There came a time when you got the drugs. Before you made any sales or before she made any sales, did you have any conversation with her how you would pay for the drugs?

A Yes, it was strictly on her selling it.

Q Did you ever make any attempt on your own behalf, to take any of those packages of cocaine to sell them?

A No, sir.

Q The only part you played was to assist in driving her to wherever she told you?

A Yes, in the beginning, and then I laid back.

Q She asked you to stay away?

A Yes, I used to wait in the house all the time.

Q Originally when you first went to the FBI, when you met with the prosecuting officials in this court,

1
2 did they discuss with you the various crimes that you would
3 not be prosecuted for?

4 A They told me that I won't be prosecuted on
5 any of the actions that happened in this case.

6 Q Only to do with this case.

7 Did they extend to you the promise of not
8 prosecuting you for any crimes that you told them about --

9 MR. DOUGHERTY: I will object to the question.

10 THE COURT: Sustained. Do not answer it.

11 MR. HORLICK: I have a right to bring that out.

12 THE COURT: The objection has been sustained.

13 If you want a side bar, I will give it to you.

14 MR. HORLICK: I would like a side bar.

15 (The following transpired at the side bar:)

16 MR. DOUGHERTY: Your Honor, I think his
17 question suggests that this witness may be guilty
18 of a crime. I think the question is objectionable.

19 MR. HORLICK: I have the right to bring out
20 the deal that is made to show bias on behalf of
21 this witness.

22 THE COURT: I agree with the prosecutor,
23 there is a suggestion here that this witness is
24 guilty of other crimes, and for that reason, the
25 objection is sustained.

Varga-cross

MR. DOUGHERTY: If I may suggest, he could ask what promises were made.

THE COURT: Yes, that is what you can ask.

MR. HORLICK: I will do it that way then.

(The following transpired in open court:)

BY MR. HORLICK:

Q Mr. Varga, can you tell me what promises were made to you by any members of the prosecuting team, any United States Attorney or any FBI agent or any law enforcement agent, in return for your testimony -- what they promised to you?

A Well, that I wouldn't be prosecuted in any action that I had given them.

Q In other words, their promise to you was in return for your testimony, whatever crimes you told them about that you committed, you would not be prosecuted?

MR. DOUGHERTY: Objection.

THE COURT: Sustained. Do not ask him that. That is entirely a new area.

Come up again, gentlemen.

(The following transpired at the side bar:)

(continued next page.)

Varga - cross/Horlick

(The following took place at the side bar.)

MR. DOUGHERTY: Your Honor, I may be dense, but the question suggested to me that in addition to his information with regard to this case -- The question suggests that if he divulged any other crimes, that he was given immunity for that. And I think that question is objectionable. And I think he ought to --

THE COURT: That is sustained.

MR. HORLICK: That was not my question. That was his answer.

THE COURT: You are putting the words into this witness' mouth. And that's the objection. And it's objected to and sustained. And you may not ask it.

Ask him. Ask him.

MR. HORLICK: My question to him --

THE COURT: But we don't want you to interpret

MR. HORLICK: No, sir.

THE COURT: (continuing) -- what it is.

MR. HORLICK: Did I hear wrong?

THE COURT: You let him answer.

MR. HORLICK: When I asked him the question -- We decided at the side bar. He answered -- The way I heard it, they promised me that they won't prosecute for any crimes that I --

Varga - cross/Horlick

MR. DOUGHERTY: Any actions.

MR. HORLICK: He said, "crimes."

Can I have it reread? "I don't mean to fight,
Judge.

THE COURT: This is an area which you have
brought up.

MR. HORLICK: Right.

THE COURT: New. And this is something which
you are using for direct questioning of this witness.
And as to that, the leading which you are doing is
improper, and you cannot ask it as a direct question
and cross-examine as to that question, too.

MR. HORLICK: No, sir.

THE COURT: That's what you are doing.

MR. HORLICK: Okay.

Judge, I will try to ask the question as a
direct examination question.

THE COURT: And that means you just ask, "What
did you say, and what else was said."

MR. HORLICK: That's fair.

THE COURT: Rather than putting words in, which
is cross-examination.

MR. HORLICK: That really wasn't what I was try-
ing to do.

4 1

2 you appeared at their office?

3 A Yes.

4 Q Were you represented by an attorney or anyone
5 else?

6 A No. I went there by myself.

7 Q Will you tell us the conversation that you had,
8 including what you asked them, and what they told you, or what
9 they may have asked, and you told them, with respect to -- only
10 to the question of the crime or crimes that you might not be,
11 or would not be prosecuted for?12 A When I went to them, I gave them a partial of
13 -- or brief of what happened, because I wanted to know what
14 happens to me if I relate the whole story to them.

15 Q You say a partial or brief? You mean --

16 THE COURT: Let him tell it to you, counselor.

17 THE WITNESS: Well, partially of what happened.

18 I told them about me being abducted, my car stolen, and
19 my children threatened. And I didn't want to tell them
20 any more because they asked me how did this come into
21 the picture about this abduction, my car stolen, and
22 the threats. So I told them there was a deal about --
23 with coke. And I didn't want to tell them any more
24 unless they tell me what happens to me after I relate
25 the whole story to them. So they told me there will be

no charges pressed against me in this case.

MR. HORLICK: I have no other questions. Thank you, sir.

THE COURT: Are you finished with the cross-examination of this witness?

MR. HORLICK: Yes, your Honor.

THE COURT: Okay. I think we will conclude for the day, and we will continue tomorrow morning.

You are actually on trial here tomorrow morning. Sign in downstairs before you come up. And don't stay down there. Come directly up here.

And how is the calendar for tomorrow?

May I see it?

THE CLERK: We have a pre-trial at 9:15.

THE COURT: All right. We will attempt to start at 10:00 o'clock. So please be here so that we can start at that time.

Please do not discuss the case among yourselves or with anybody else.

The jury may leave.

(Whereupon, the jury retired from the courtroom.)

THE COURT: Okay. Thank you. 10:00 o'clock tomorrow morning.

MR. DOUGHERTY: Good afternoon.

1 continue. It may be that you may find yourself not
2 on this jury, if the practice continues, because the
3 Court was ready to proceed and this has resulted in
4 everyone here who was here having to wait half an
5 hour for you. I hope it does not happen again. It
6 is nice that you are here: *

7 Are you ready to proceed?

8 MR. DOUGHERTY: Yes sir. The Government
9 calls John Esposito to the stand. May I go and get
10 him?

11 THE COURT: Yes.

12 (Pause.)

13 J O H N E S P O S I T O, having been first
14 duly sworn by the Clerk of the Court, testified as
15 follows:

16 THE CLERK: State your full name and spell it
17 for the court reporter.

18 THE WITNESS: John Esposito, E-S-p-o-s-i-t-o.

19 DIRECT EXAMINATION

20 BY MR. DOUGHERTY:

21 Q Mr. Esposito, what is your present occupation?

22 A I am a manager for Earl Scheib Auto Paint
23 Shops.

24 Q Do you manage a particular shop?

25 A Yes.

1
2 Q Where is that located?

3 A 787 Bruckner Boulevard, Bronx.

4 Q How long have you been managing that shop?

5 A That particular shop approximately 7, 8 months.

6 Q Before that, what were you doing?

7 A I was manager at various other shops for the
8 past years, approximately.

9 Q Directing your attention to the month of June,
10 1974, can you tell us what your employment was during that
11 month?

12 A I was manager of the Earl Schieb shop at 6th
13 Avenue and 67th Street in Brooklyn.

14 Q Do you know an individual by the name of Louis
15 Tonani?

16 A Yes.

17 Q Take a look around the courtroom and see if you
18 see him here.

19 A Yes, I do.

20 Q Would you point him out?

21 A Third man from the left. (Indicating)

22 MR. DOUGHERTY: Let the record reflect that
23 the witness has identified the defendant Tonani.

24 Q How long do you know Mr. Tonani?

25 A Approximately a year.

1

2

Q Did you know him in June of 1974?

3

A Yes.

4

Q What was your relationship with Mr. Tonani?

5

MR. STELLA: Objection, your Honor.

6

THE COURT: Overruled. I will permit it.

7

A He was in my employ as a part time employee.

8

Q When was he in your employ?

9

A Approximately the spring of '74 through early

10

summer -- early summer of '74, from late winter to early

11

spring.

12

Q Which year are you talking about?

13

A '74.

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(Cont'd on next page.)

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2 Q You testified you were managing a shop on 6th
3 Avenue in June of 1974. Do you recall what contact if
4 any you had with the defendant Tonani during the month of
5 June.

6 A Yes, he had worked for me part time. He had
7 been in my shop a few times that he wasn't working for me.

8 Q Did you ever see Mr. Tonani when he wasn't
9 working at your shop?

10 A Yes, he came there at times when he wasn't
11 supposed to be working.

12 Q Do you recall a specific instance when you saw
13 Mr. Tonani at your shop in June when he was not working?

14 A Yes.

15 Q Do you want to tell us approximately, if you
16 can recall, when during the month of June you saw Mr. Tonani?

17 A Mid June.

18 Q Is that your best recollection?

19 A Yes.

20 Q All right, do you recall approximately what
21 part of the day you saw the defendant?

22 A Yes, late afternoon.

23 Q Can you tell us who else was present in the
24 shop on that occasion, if anyone?

25 A I can't recall. Some of my crew might have

1
2 been there. I don't remember exactly.

3 Q What happened after Mr. Tonani came into your
4 shop -- before I get to that, how did he get into the shop?

5 A Through the bay door in the front, I imagine.
6 His car was pulled into the oven facing the opposite way --
7 the way it was supposed to be facing.

8 Q When you say his car, do you know for a fact
9 that it was his car?

10 A Yes.

11 Q And can you describe the vehicle for us?

12 A '68 or '69 Chevrolet, light green.

13 Q And did you notice whether or not any other
14 individuals were in the car at the time?

15 A Yes, there were.

16 Q Do you recall approximately how many other
17 persons were in the car?

18 A Two.

19 Q Now, you mentioned that Mr. Tonani pulled the
20 car into an oven. Can you tell us what you mean by an
21 "oven"?

22 A The oven is part of the spring operation in
23 my shop where the cars, after they have been sprayed with
24 paint, go into the oven for the baking process.

25 Q Can you give us a description of the interior

1
2 of the oven?

3 A Just a sheet metal cove, with rows of infra-
4 red lights up and down each one. It's large enough to fit
5 a normal sized car.

6 Q Do you recall whether or not the lights were
7 on at the time Mr. Tonani pulled his car in?

8 A No, they were off. They had been disconnected.

9 Q What do you recall after he had pulled his car
10 into the oven -- what were you doing at the time he pulled
11 in?

12 A I was taking care of my daily work pertaining
13 to the shop. I came out of my office and I notice the car
14 in the oven and Louis had stepped out of the car and came
15 by the office and there were two other people in car. The
16 car was facing the opposite way that it should be facing,
17 so when I came up the front of the oven I saw from the back
18 of the car forward.

19 Q What if anything did you observe when you
20 viewed the car?

21 A There were two men in the back seat. One
22 in the center and one on the left. Louis had come out of
23 the car and went to the phone, mentioned that he had somebody
24 in the car that owed him some money.

25 Q Did he say anything that you recall about how

1
2 this individual in the car owed him money?

3 A There was some involvement of a coke deal or
4 drug deal or something. I don't know exactly what.

5 Q Did you have occasion to observe the attitude
6 of the person sitting in the back of the car --

7 MR. HORLICK: Objection.

8 Q -- when you looked into the car?

9 THE COURT: I will sustain the objection. You
10 will have to rephrase that question.

11 Q All right, can you tell us what else if anything
12 you observed when you noticed two individuals sitting in the
13 back of the car?

14 A The man in the back of the car in the center
15 was bound in some way -- handcuffed -- he was leaning forward
16 and the other person was watching him or something -- keeping
17 guard over him.

18 Mr. Tonani had mentioned that he had the man
19 and he owed him some money and he was going to get it.

20 The other person in the car watching, his
21 name was Phillipe, just wanted out of there -- he wanted
22 Louis to take the man away.

23 I was busy trying to get them out of the shop.
24 I wanted no part of what was going on.

25 Q Approximately how long, if you remember, was

1
2 Tonani in the shop with his automobile?

3 A Approximately 15 minutes to half an hour.

4 Q And do you know where if anywhere they went
5 after they left the shop?

6 A No.

7 Q Did you have occasion to see Mr. Tonani at
8 any other times?

9 A After that, yes, once.

10 Q Do you recall when that was?

11 A It was on a Saturday afternoon in September or
12 late August.

13 Q And do you recall where you saw Mr. Tonani?

14 A He came to my house.

15 Q And can you tell us what his purpose was in
16 coming to your house on that occasion?

17 MR. HORLICK: Objection, your Honor.

18 THE COURT: I will sustain it. He can state
19 what Tonani said to him and what he said to Tonani.

20 MR. HORLICK: If your Honor pleases, may we
21 have a side bar on this?

22 THE COURT: Surely, come up.

23 (The following took place at side bar.)

24 MR. HORLICK: Judge, according to the 3500
25 material we have, this conversation would involve

1
2 Tonani asking the witness to have his wife sign a
3 release for some kind of negligence case. I do not
4 see the connection.

5 MR. DOUGHERTY: Your Honor, at the time the
6 conversation occurred Mr. Tonani was driving Mr.
7 Varga's car, number one.

8 Number two, he mentioned -- he testified that
9 Mr. Tonani mentioned it was his car and during the
10 conversation he showed Mr. Esposito photographs of
11 a vacation that he and his wife took and those are
12 the photographs that Mr. Varga turned over to Agent
13 Young.

14 Further, Mr. Esposito had occasion to meet Mr.
15 Mr. Tonani's wife at that time and the girl in the
16 photograph is the same girl he met on that occasion
17 and that's the same girl Mr. Varga identified as
18 looking as the girl.

19 THE COURT: Mr. Tonani is on trial and not his
20 wife.

21 MR. ESPOSITO: He utilized his car --

22 THE COURT: If it is the car, I will permit
23 you to bring it out about the car and the fact that
24 he actually had possession of it at that time.

25 MR. DOUGHERTY: I do not wish to highlight the

1
2 aspect of the conversation regarding Mr. Tonani's
3 desire to get Mr. Esposito's wife to sign some sort of
4 release.

5 MR. HORLICK: I would have no objection if the
6 United States Attorney would lead the witness and ask
7 him, "Did he have a car? Did he show you pictures?"
8 I do not know what it has to do with it. It is
9 liable to leave an inference --

10 THE COURT: Fine.

11 MR. DOUGHERTY: I have no objection to that.

12 (The following took place in open court.)
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14 (Cont'd on next page.)
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DIRECT EXAMINATION

BY MR. DOUGHERTY: (Cont'd.)

Q Mr. Esposito, you just testified that you had occasion to see the defendant Tonani early September of '74; correct?

A Yes.

Q And at the time that you saw the defendant, do you recall where it was that you saw him, was it at your house?

A Yes.

Q Who else was present when you had the meeting?

A His wife, my wife.

Q And had you ever met Mr. Tonani's wife before?

A A few times previously, yes.

Q And after the meeting took place, did you have occasion to get into an automobile with Mr. Tonani's wife?

A Yes.

Q And do you recall what kind of automobile it was?

A '71 or '72 Ford, green with a tan inside.

Q Are you sure about the year of the car?

A Exactly -- it's '71 or '72 -- one of those, yes, definitely.

Q What, if anything, did Mr. Tonani say at that

1
2 time about the car, to you?

3 A That he had his new car, that it was his car.

4 MR. DOUGHERTY: May I have these marked as one
5 exhibit?

6 THE COURT: I think at this time we will have
7 another side bar. Come up.

8 (Side bar)

9 THE COURT: At this point you intend to bring
10 in the pictures of the car?

11 MR. DOUGHERTY: I don't intend to offer them.
12 I only wish for him to identify the car in the photos
13 looking like the car. I will then connect up the
14 pictures through agents who took those photographs of
15 Stephen Varga's car. That is his car in the photo-
16 graphs.

17 THE COURT: That looks like it.

18 MR. DOUGHERTY: They are black and white. That
19 aspect will probably make his identification conditional.
20 I only wish to show him the photos and ask him whether
21 or not the car in the photographs looks like the car
22 he was in with Mr. Tonani and I will not offer the pic-
23 tures of that at this time. I will hold them subject
24 to connection through an agent at a later time.

25 MR. STELLA: I don't think he should be allowed

1
2 to do --

3 THE COURT: Just that it looks like.

4 MR. STELLA: That's all.

5 MR. DOUGHERTY: Yes.

6 THE COURT: All right.

7 (In open court)

8 THE CLERK: 15 photographs marked Defendant's
9 Exhibit -- Government's Exhibit No. 10 for identifi-
10 cation.

11 BY MR. DOUGHERTY:

12 Q I am going to show you Government's Exhibit
13 10 for identification, Mr. Esposito, take a look at the photo-
14 graphs and tell us whether or not you can identify what is
15 depicted in these photographs.

16 A It's a 19 --

17 Q Just by a yes or not answer. Can you identify
18 what is in those photographs?

19 A Yes.

20 Q Tell us what is in the photographs -- are
21 those photographs of an automobile?

22 A Yes, they are of a 1971 or '2 Ford with South
23 Carolina plates.

24 Q Does that automobile look like the car that you were
25 in with Mr. Tonani and his wife in September of '74?

1
2 A Yes.

3 Q Is that the same car that you observed Mr.
4 Tonani drive into the oven in June of '74?

5 A I think so, because it has out-of-town plates.
6 I noticed that his car at the time had out-of-town plates on
7 it.

8 Q You mean to say the car he drove into the oven
9 had out-of-town plates?

10 A No, the car he drove into the oven was a dif-
11 ferent car. This is the car he came to my house with.

12 Q The car that you saw in September of '74, the
13 same car you saw him drive into the oven in June of '74?

14 A No.

15 Q I am going to show you --

16 MR. STELLA: Judge, may we have a side bar
17 to this?

18 THE COURT: Yes.

19 (Side bar)

20 MR. STELLA: I was--

21 THE COURT: What's the relationship of these
22 pictures to the defendant?

23 MR. DOUGHERTY: Your Honor, I showed the pic-
24 tures to Mr. Esposito in September of '74 --

25 THE COURT: Tonani showed them.

1
2 MR. DOUGHERTY: The car was recovered by the
3 FBI after the arrest.

4 THE COURT: Tonani showed them to him?

5 MR. DOUGHERTY: Yes.

6 MR. STELLA: Fine, Judge.

7 THE COURT: All right?

8 MR. STELLA: Yes, sir.

9 (In open court)

10 BY MR. DOUGHERTY:

11 Q Look at the Government's Exhibit No. 5 and
12 tell the Court and the jury whether you recognize that exhibit?

13 (Shown to witness)

14 A Yes, these are some pictures that --

15 Q Try to keep your voice up.

16 Q These are some pictures that Mr. Tonani and
17 his wife showed us the day he picked us up at our office, on
18 his vacation, from some place in the Bahamas.

19 Q You're talking about the meeting you and your
20 wife had with him and his wife in September of '74?

21 A Yes.

22 MR. DOUGHERTY: Thank you.

23 Your Honor, at this time I have no further
24 questions of this witness.

25 THE COURT: Cross-examination by the attorney

for Joseph DeSimone.

CROSS-EXAMINATION

BY MR. HORNICK:

Q Mr. Esposito, do you know anyone by the name of Joseph DeSimone?

A No.

Q Do you see the man sitting with the pink shirt at counsel's table?

A Yes.

Q Do you know him?

A No.

Q You ever see him before?

A No.

Q Now, you say this event took place sometime in June, is that right?

A Yes.

Q Can you tell us when in June it happened?

A Middle part of the month. The exact date I couldn't exactly give you, no.

Q Could it have been as early as the 14th or 15th of the month?

MR. DOUGHERTY: I object.

THE COURT: Sustained.

Q You say this car pulled into the oven?

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A Yes.

Q Did anyone ever use that for parking when it was used as an oven?

A No.

Q You say it pulled in frontways and you could see the back?

A Right.

Q The men you saw in the car, how close could you get to them?

A I went to the left rear section of the car and I was able to see over the rear window.

Q When you say you went to the rear left section, you were looking over the back seat?

A Over the back seat.

Q You saw approximately the shoulders and heads of two men?

A Yes.

Q And one was Phillipe?

A Yes.

Q The other one you don't know?

A No.

Q Had you ever seen that man before?

A No.

Q Do you remember how he was dressed?

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A No, I don't.

Q Do you remember approximately how old he looked to you?

A 50 or more.

Q Now, was that the only glimpse of him that you got from that position looking over the back seat?

A Yes.

Q And he was leaning forward when you were looking at him?

A Yes.

Q How long would you say you observed that particular man?

A A few seconds, a minute perhaps.

Q That was the only time that you saw him?

A Yes.

Q When he was leaning forward you said he was bound some way, did you see anything?

A His hands were bound in front of him together -- he was leaning forward with his hands in front of him.

Q You were looking from behind and you could see his back and you knew his hands were bound in front of him?

A Yes, I saw him from an angle, I could see the left side of the face, left shoulder, left leg I guess and his hands in front of him.

1
2 Q You saw his hands?

3 A Yes.

4 Q A minute ago you said you saw over the back
5 seat.

6 MR. DOUGHERTY: Objection.

7 THE COURT: Sustained.

8 Q Is that where you made your observation, from
9 behind him?

10 A From behind and to the left.

11 Q And to the left? Where was the other man
12 seated with respect to this man?

13 A To his left.

14 Q Was he between you and him?

15 A Yes.

16 Q You could see his hand and you knew he was
17 bound?

18 A Yes.

19 Q Did you see how he was bound?

20 A I recall handcuffs -- I don't -- I can't --

21 Q Do you recall seeing handcuffs or having dis-
22 cussions about handcuffs?

23 A I believe I saw them -- it's hard for me to
24 recall. I believe I saw them. I can't really be sure.

25 Q You can't say whether that belief is based

1
2 upon what you saw?

3 A Can't be absolutely positive, no.

4 Q Now, Mr. Esposito, after this event occurred,
5 you were interviewed by the FBI, isn't that right?

6 A Yes.

7 Q Did they show you photographs of people to
8 identify?

9 A Yes.

10 Q Did they show you photographs of individuals
11 that they believed might be the man you saw in the back of
12 the car?

13 A I don't know.

14 Q You were never able to make an identification
15 of anyone?

16 A No.

17 Q Or of any photograph that you saw?

18 A No.

19 Q You were asked by the FBI, were you not, if
20 you knew a man by the name of Stephen Varga?

21 A Yes.

22 Q Were you also shown a picture of a man named
23 Stephen Varga?

24 A I guess so, I don't know.

25 Q Did the FBI -- any agent say to you, "This is

1
2 the man we think was in the car"?

3 A Specifically, I don't remember.

4 Q How many pictures do you think you were shown,
5 do you recall?

6 A No, I don't.

7 Q Do you recall, were you interviewed by the FBI
8 in November of '74?

9 A Yes.

10 Q When was that, do you recall?

11 A November of '74.

12 Q Well, the beginning of the month, or the end
13 of the month?

14 A I don't recall.

15 Q But you recall that the other event took place
16 in the middle of June?

17 A Yes.

18 Q The middle of June before that November?

19 A Yes.

20 Q When you were interviewed by the FBI, did they
21 show you photographs that first time?

22 A Yes.

23 Q If I tell you, sir, that the FBI showed you
24 what they called a surveillance photograph taken of Stephen
25 Varga, would that refresh your recollection as to whether or

1
2 not you saw a picture of that man?

3 A If I saw the picture, I would probably remem-
4 ber if I saw it before.

5 Q You didn't know the man and you didn't identify
6 the picture?

7 A No.

8 Q Mr. Esposito, have you ever been convicted of
9 a crime?

10 A No.

11 Q Isn't it a fact that you were convicted of a
12 crime in Nassau County in 1971 --

13 MR. DOUGHERTY: I am going to object to the
14 question.

15 THE COURT: Sustained, you are bound by the
16 answer, counsel.

17 MR. HORLICK: I am willing to have a side bar
18 according to the information that I have.

19 THE COURT: Come up.

20 (Side bar)

21 THE COURT: Did you see this word?

22 MR. HORLICK: I am sorry, Judge.

23 (In open court)
24
25

BY MR. HORLICK:

Q Mr. Esposito, when you spoke to the agents of the FBI in November, did you tell them about this event that you just described to us in court?

A No.

Q Did anybody -- withdrawn. Did there come a time after they interviewed you that they came to see you again?

A Yes.

Q As a matter of fact, they served you with a subpoena to appear before the Grand Jury in November, isn't that right?

A Yes.

Q Did you go to the Grand Jury, did you come to this courthouse on November 25th, I think it was?

A It was postponed to a later date, I believe.

Q Did you appear in the Grand Jury on November 25th?

A No.

Q Do you remember how long after the agents interviewed you that November 25th, it was?

A I don't remember when they interviewed me.

Q You don't remember the interview?

A I don't remember the exact time.

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Q You came to the courthouse?

A Yes, I did.

Q Did you speak to anyone on November 25th, with regard to this case?

A At the time I was there, whether November 25th or not, I don't remember. I did speak to a federal agent, yes.

Q Did you tell him about the story that you told us today?

A The second time I saw them I told them the truth.

Q Is that the second time, November 25th?

A The day I saw them was the second time.

Q Where did you meet with them?

A At the Federal Attorney's Office.

Q In this building?

A Next door.

Q In the connecting building?

A Right.

Q At the time you say you told them the truth?

A Yes.

Q Did they show you pictures of Stephen Varga again?

A I guess they did.

1
2 Q But you never made an identification of the
3 man in the car?

4 A No.

5 Q Did you give them a description of Phillipe?

6 A Yes.

7 Q Did you tell them where he would be located?

8 A No.

9 Q There came a time when you testified in the
10 Grand Jury?

11 A Yes.

12 Q At that time had you been made any promises
13 by any prosecuting official?

14 A No, other than immunity -- I received immunity
15 for my testimony in the Grand Jury.

16 Q What do you mean when you say "immunity"?

17 A I guess that -- immunity, that I couldn't be
18 prosecuted fro anything that I might say.

19 Q You were represented by counsel at that time?

20 A Yes.

21 Q And that promise was made to you, that you
22 wouldn't be prosecuted?

23 A Yes.

24 Q Did anyone discuss with you what crime you
25 had committed that you wouldn't be prosecuted for?

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A No, no.

Q Did any agent inform you that it was a crime to lie to the FBI during the investigation?

A I guess so.

Q Do you recall when that conversation took place?

A On the felony I was called at work and advised that I should come and tell them exactly what I knew.

Q Was that after you had seen them for the first time in November?

A Yes.

Q What did you tell them over the telephone?

A I made arrangements to meet with them.

Q Did you tell them that you had something to add to what you had already told them?

A I didn't tell them anything. They told me they knew I had something to add so I made arrangements to meet with them and tell them what I knew.

Q When you sat down to talk with them after that telephone conversation, who did you sit down with?

A Mr. Young and I don't remember the other gentleman's name.

Q You don't remember the other man's name? Did they tell you what they wanted to see you about at that time?

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2 A They mentioned what it was in reference to.

3 Q What did they tell you?

4 A That they knew what I had told them Liston
5 wasn't the truth and they had other information and I should
6 tell them what I knew.

7 Q Did they tell you what other information they
8 had?

9 A No, they just told me that they knew what I
10 had told them wasn't the truth.

11 MR. NORLICK: I am sorry?

12 A They didn't tell me what information they had.
13 They told me what I had told them was not the truth.

14 Q Did they question about the event?

15 A Yes, they did.

16 Q Did they tell you when it occurred, what date,
17 what, what place?

18 A They tried to get me to be specific about
19 times and dates, just as you had but so far up until now, I
20 done the best as I could do as far as dates and times are
21 concerned. I told them the same thing.

22 Q Did they mention to you handcuffs?

23 A I don't recall.

24 Q The other man, Phillippe, did he ever get out
25 of the car?

1
2 A At one time, yes.

3 Q Where did he go?

4 A Round the center of the shop.

5 Q Did you have a conversation with him at that
6 time?

7 A Yes, I did.

8 Q So that the man in the car whoever he was, was
9 left alone?

10 A No, I believe Louis went to watch him.

11 Q He went back?

12 A Yes.

13 Q You said that the two men that Louis and
14 Phillipe were watching this man. Now, the first time you
15 saw the man, he was with Phillipe in the car?

16 A Yes.

17 Q Was the man sitting staring at him or just
18 sitting in the car?

19 A He was sitting in the car with him, whether
20 staring or what he was doing I don't know.

21 Q When you said he was watching him, was that
22 something suggested to you in conversations?

23 MR. DOUGHERTY: Objection.

24 THE COURT: Sustained. Rephrase the question.

25 Q Did anybody tell you before today that that

1
2 man was watching the man who was bound?

3 A Yes.

4 Q Who told you he was being watched?

5 A At the time it took place, one didn't leave
6 the man alone, when one was there the other was doing some-
7 thing else. There was always one person watching him.

8 Q I am asking you how do you know that either
9 one of them watched the man. When you say "watched" --
10 when you say "watching the man", do you mean in the sense
11 guarding him?

12 A Yes.

13 Q Preventing his escape?

14 A Yes.

15 Q Preventing him from crying out?

16 A Yes.

17 Q How do you know that they were doing that?

18 A Because they didn't try to hide it from me.

19 Q What did they do, not to try and hide it from
20 you?

21 A Mr. Tonani mentioned he had his man here and
22 he wasn't going to let his man go and the other man --

23 Q Don't tell us anything that the other man said.

24 MR. DOUGHERTY: I think he should be allowed
25 to complete his answer.

THE COURT: If you want to ask it later, you may.

Q Did the man say, "I am standing guard over him" or "I'm watching him"?

A Not in those exact words, but in the course of conversation, the way the conversation went, that's what it was.

Q The conversation with whom?

A With Phillipe, with Louis, myself --

Q Either one of them say, "I am watching him, he is watching him"?

A I can't recall.

Q What you're saying is, that you saw Phillipe with the man and you saw Louis with the man, they were together in the car, is that right?

A Yes.

Q Except there was a time when Phillipe got out and Louis got in?

A Yes.

(Continued on next page.)

HS:tr
1/4

Esposito-cross

656

Q Did you know this man Phillipe from anything that you had with him before this date?

A He had been around with Louis a couple of times before.

Q When Louis told you, "This man owed money," was he referring -- to which of the two men in the car was he referring?

A The old man, I guess.

Q You guess, you assume?

A Well, I guess -- yes, I assumed.

Q With regard to the car, you say you got close enough to look over someone's shoulder. Are you certain that there were only two people in the car after Louis got out?

A Yes.

Q There were never more than two people in the car?

A Yes.

Q Did you get close enough to the front seat to see that there was no one there?

A I didn't look down on the front seat, but there was no one sitting on the front seat.

Q There were three people all together, Louis, Phillipe and the one you did not know?

1
2 A Yes.

3 MR. HORLICK: No further questions.

4 THE COURT: All right, cross examination by
5 the attorney for Louis Tonani.

6 CROSS EXAMINATION

7 BY MR. STELLA:

8 Q How old are you, Mr. Esposito?

9 A 28.

10 Q Are you married?

11 A No.

12 Q Are you presently a candidate for the New York
13 City Police Department?

14 A Yes.

15 Q When the agents first came to you in November
16 -- November 14, 1974 as a matter of fact, do you recall that
17 first meeting?

18 A Yes.

19 Q Do you remember where it was?

20 A FRI headquarters in Manhattan.

21 Q Did you go there voluntarily?

22 A Yes.

23 Q Were you called on the phone and asked to
24 appear there?

25 A Yes, they got in touch with me.

1
2 Q The first time the FBI got in touch with you
3 was my telephone?

4 A Yes.

5 Q They called you where, sir?

6 A At my home and they tried to get in touch with
7 me through where I worked as well, I think. I got the
8 message and called them, because I did not know what it was
9 in reference to.

10 Q YOU called the agents?

11 A Yes.

12 Q Do you recall who you spoke to?

13 A Mr. Young.

14 Q Do you recall when that was?

15 A Before Christmas. I don't know the exact
16 time.

17 Q You don't remember.

18 The interview took place on November 14, 1974.
19 I would assume that the telephone call took place prior to
20 that date?

21 MR. DOUGHERTY: I would object to what Mr.
22 Stella assumes.

23 THE COURT: Sustained.

24 Ask the next question.

25 Q When did you receive the phone call, was it

1 prior to November 14, 1974?

2 A It was prior to my meeting with the FBI.

3 Q Who did you speak to -- who spoke to you?

4 A Mr. Young, I believe.

5 Q What did he say to you and what did you say to
6 him?

7 A That he wanted to ask me some questions.

8 Q Did he tell you about what?

9 A I don't believe so.

10 Q What did you tell him?

11 A Well, I wanted to find out what it was about
12 and I made the earliest appointment to see him, which I
13 believe was later that afternoon when I was able to get away
14 and go down there.

15 Q That was the entire content of that conversation
16 with the FBI, Mr. Exposito, "We'd like to see you. I will
17 be right down." is that right?

18 A More or less, yes.

19
20
21 (Cont'd on next page.)
22
23
24
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1
2 Q Then there came a time where you were interviewed
3 in the New York office of the FBI that same day?

4 A Yes.

5 Q And at that time, Mr. Esposito, is it not true
6 that you told them you didn't know anything about this incident?

7 A Right.

8 Q Were you shown any photographs on that day?

9 A Yes.

10 Q Were you shown a photograph of Louis Tonani?

11 A Yes.

12 Q Did you identify that photograph?

13 A Yes.

14 Q Were you shown a photograph of Stephen Vega?

15 A I guess so. I don't know.

16 Q You don't know. You don't even know who Stephen
17 Vega is, do you?

18 A No.

19 Q You didn't identify any photograph of anyone
20 as being Stephen Vega?

21 A No.

22 Q Then there came a time when you left FBI Head-
23 quarters and you went home; is that right, sir?

24 A Went back to work first.

25 Q When was the next time you heard from the FBI?

1 2
2 A Short time afterwards. A week or two or three.
3 I don't know. It's hard to remember the time. But they got
4 in contact with me and told me that what I told them was --
5 you know; they found out to be untrue. They wanted to talk
6 it over with me again.

7 Q I'm sorry. Did you say -- just say that what
8 you told them they found out to be not true?

9 A Right.

10 Q Did you ask them on what basis they told you
11 that?

12 A Not on the phone, no.

13 Q When you spoke to them the second time -- I will
14 withdraw that question.

15 Mr. Esposito, following that second phone call did there
16 come a time when you had another conversation with either
17 Agent Young or Parks or any other FBI agent?

18 A Yes.

19 Q When did that conversation take place, if you
20 remember?

21 A When, I can't say. It was a short time after-
22 wards. In the Federal Attorney's office, the next time I saw
23 them.

24 Q In the U.S. Attorney's office in this building?

25 A Yes.

1 Q Who was present at that meeting?

2 A Mr. Young, his partner, and Mr. Dougherty.

3 Q What was the substance of that conversation,
4 Mr. Esposito?

5 A They informed me that they know that what I had
6 told them was not the truth. And they told me that I -- you
7 know, for lying in front of the Grand Jury, that I could get
8 in trouble.

9 Q Did anybody mention to you that since you were
10 waiting for a job in the New York City Police Department that
11 it wouldn't be nice if you were indicted for perjury?

12 MR. DOUGHERTY: Objection.

13 THE COURT: I will permit it.

14 THE WITNESS: Could you rephrase that? I am
15 sorry.

16 Q I said, did anyone say to you at that second
17 meeting when Mr. Dougherty was present, that it wouldn't be
18 very nice, you, a candidate for the New York City Police
19 Department, to be indicted for perjury?

20 A No. I don't think they made a specific reference
21 toward that. But they just told me, you know, that I could
22 be prosecuted for perjury if I didn't tell the truth in front
23 of the Grand Jury.

24 Q Did you think that it wouldn't be very nice to
25

4
1 be indicted for perjury, having --

2
3 A It wouldn't --

4 Q Pardon me. Did you think that it would not
5 be very nice, being indicted for perjury, while waiting for
6 an appointment to the New York City Police Department?

7 A It wouldn't be nice to be indicted for perjury
8 under any circumstances.

9 Q Was it at that time that you resolved to
10 cooperate with the FBI?

11 A Yes.

12 Q It was? And then what did you tell them?

13 A Whatever I knew the truth, as I knew it.

14 Q What was the truth as you knew it?

15 A What I have stated here today.

16 Q Let's go back to that day, back in June of 1974.
17 You don't remember -- do you remember the date?

18 A The exact date, no.

19 Q Do you remember the time that this incident
20 began?

21 A Mid-afternoon, later in the afternoon.

22 Q Sir, what do you mean by mid-afternoon or later
23 in the afternoon?

24 A More than likely, after 2 o'clock.

25 Q After 2 o'clock. Were you there when that car

2 pulle' in?

3 A I was somewhere on the premises, yes.

4 Q Sir?

5 A I was somewhere on the premises, yes. Either
6 in my office or in the shop someplace.

7 Q So you didn't see the car pull in?

8 A No. I saw the car when it was in the oven
9 already.

10 Q You don't even know if Mr. Tonani drove that car
11 in, do you?

12 A That was his car. But I can't say I saw him
13 driving it in. No.

14 Q I am sorry?

15 A I didn't see him drive the car in. No.

16 Q You didn't see Mr. Tonani drive the car?

17 A No.

18 Q You don't know whether or not Mr. Tonani left
19 the car parked in the driveway and one of your employees may
20 have put the car in the tunnel, do you?

21 A I don't know if any employees were there at the
22 time. It is possible. But I don't know.

23 Q Well, didn't you testify earlier that there
24 were some employees present?

25 A I said I wasn't sure. I don't recall. Sometimes

1 6
2 they would leave early. Sometimes I wouldn't have that much
3 work and I would send them home at 12 o'clock or 1 o'clock.
4 Each day is different.

5 Q Do you remember the day of the week that this
6 was, sir?

7 A No, I don't.

8 Q Is it normal for you to be the only employee
9 present on the location of the job, or your office or your
10 shop?

11 MR. DAUGHERTY: Objection. Is that a normal --

12 THE COURT: The objection is sustained. Don't
13 answer that question.

14 Q So there came a time when, wherever you were,
15 you left and you walked into the body shop area or paint
16 area and you observed a car in a -- what did you call it,
17 a paint --

18 A Oven.

19 Q In a paint oven. You observed the car there
20 and you saw the back of the car? And you saw -- I think you
21 said two people in the car?

22 A Yes.

23 Q Now, the first time that you observed that car,
24 sir, was Mr. Tonani in the car or out of the car?

25 A I believe he was getting out on his way to the

office the first time I saw him.

Q Was he getting out of the car or was he on his way to the office?

A I can't recall exactly.

Q So you came upon this car parked in the paint oven, and from where you were, you could observe the two heads?

A Yes.

Q Now, when for the first time do you recall engaging in a conversation with Mr. Tonani?

A Shortly thereafter, on his way from the car to the office.

Q As a result of that conversation, did you do something?

A Yes. I started to get nervous.

Q Did you walk over to the car?

A I wanted to know what was going on. Yes, I walked over to the car, questioned him, what was going on and what was being done. And that's all.

Q Did you have a conversation with the occupants of that car, sir?

A With Louis. And I had a conversation later on with Phil --

Q Sir, the question was --

2 MR. DOUGHERTY: Let him answer the question.

3 THE COURT: He is giving the answer. He said,
4 with Louis and later on with Felipe.

5 MR. STELLA: I thought, your Honor, that the
6 witness testified that he walked over to the car and
7 had a conversation.

8 THE COURT: You're getting directions and
9 locations, but you asked him if he had a conversation.

10 MR. STELLA: With the two people.

11 THE COURT: And he was answering you.

12 MR. STELLA: I am sorry.

13 THE COURT: Ask the next question.

14 Q Mr. Esposito, as a result of the conversation
15 that you had with Mr. Tonani, did you then have a conversation
16 with the occupants of the car, both of them?

17 A No.

18 Q You did not?

19 A No.

20 Q Did you walk over to the car?

21 A To the back of it where I was, yes.

22 Q You did?

23 A Yes.

24 Q You looked into the car?

25 A Yes.

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Esposito-cross

668

Q And did you see handcuffs on the other fellow?
Not Phillipe?

A Like I said before, he was bound in some way.
Whether I saw the silver from the handcuffs or not, I don't
recall.

MR. STELLA: Judge, I must move to strike that
answer as not being responsive. My answer called --
my question called for a --

THE COURT: Motion denied.

MR. STELLA: (Continuing) -- yes or no answer.

THE COURT: Ask your next question.

Q Mr. Esposito, did you see handcuffs on the other
person in the car?

MR. DOUGHERTY: Your Honor, the question has
been asked and answered.

MR. STELLA: I would like him to answer.

THE COURT: Is that a motion?

MR. DOUGHERTY: That is an objection.

THE COURT: Objection. Objection sustained.

Ask the next question.

Q Did there come a time, sir, that you called the
police?

A No.

Q Did there come a time that you asked Mr. Tonani

1 to leave?

2 A Yes.

3 Q Did he leave?

4 A No.

5 Q Did there come a time when the other occupants
6 of the vehicle got out of the car?

7 A Yes.

8 Q That's Phillipe?

9 A Yes.

10 Q Where did he go?

11 A He came by me. Came to me. Where I was.

12 Q Did he go across the street at all?

13 A I don't know. I don't believe he went out at
14 all. I don't think.

15 Q Is it your recollection that he went across the
16 street and got some soda?

17 A Possibly. I don't know.

18 Q That he then came back, and the gentleman in the
19 back seat of the car had a soda, a Coca Cola, which was
20 purchased in the garage across the street?

21 A I don't know.

22 Q You don't remember that part?

23 A If it happened, I didn't see it.

24 Q Were you there at all times, sir?

25 A Yes, I was.

1
2 Q Were you standing in front of that car at all
3 times?

4 A No. The shop is a large place. I was around
5 taking care of business that I had to do normally and
6 trying to get those people out of there at the same time.

7 Q What kind of business do you do normally --
8 withdrawn.

9 What business were you doing that day?

10 A Normal everyday business. Either my paper
11 work, finishing up cars, taking paper off of the cars,
12 getting in contact with the customers, having them come down
13 to get their cars, taking in cars.

14 Q Was it your recollection that on that day that
15 all those circumstances happened or some of those things
16 happened?

17 A Those things happen to me every day. It's
18 part of business.

19 Q On that specific day, Mr. Esposito --

20 MR. DOUGHERTY: Are we talking about the whole
21 day or just during the time --

22 MR. STELLA: I am sorry.

23 Q On that particular day in that period of
24 time, which you claim Mr. Varca -- you don't even know Mr.
25 Varca -- in which you claim there was someone in the back of

1
2 that car handcuffed.

3 A What was the question? I don't know.

4 Q The question was, were you involved in your
5 ordinary routine activities that day?

6 A I was trying to, yes.

7 Q During that period of time?

8 A For some of that time. I imagine I must have
9 gotten phone calls. I imagine I must have had a phone call
10 or some business to take care of. Yes. Probably.

11 Q In fact, you took care of that business?

12 A If the phone rang, I certainly picked it up
13 and spoke to whoever it was on it.

14 Q How long was that car there?

15 A I don't believe it was there longer than a
16 half hour.

17 Q Did there come a time when that car left?

18 A Yes.

19 Q Who drove it out?

20 A Mr. Tonani.

21 Q Now, you testified that you had a conversation
22 with Mr. Tonani and Philline?

23 A Yes.

24 Q Did you observe while conversing with Mr.
25 Tonani whether or not he had a car on that day?

1
2 A No.

3 Q Did you see Mr. Tonani waving a gun on that
4 day?

5 A I don't recall.

6 Q Did you see Phillipe with a gun on that day?

7 A I don't recall. I'd seen a car at one time.
8 I don't know if it was that day.

9 That's all I can tell you.

10 Q Mr. Esposito, do you think that if you saw
11 guns that day, that you would remember?

12 A Probably.

13 Q Did anybody point a gun at you?

14 A Certainly not.

15 Q Were you also involved with Mr. Tonani in
16 some business deal involving some license plates?

17 A No license plate deal. . He had taken a set of
18 my license plates and used them. There is no business
19 deal involved.

20 Q On his car?

21 A Yes.

22 Q Do you know that that illegal?

23 A Yes, I do.

24 Q You knew it when you gave him the plates that
25 it was illegal?

Esposito-cross/Stella

A I didn't give him the plates?

Q He took the plates?

A They were on the premises. He used them I guess.

Q Did you know that he was using them?

A After he had took them, yes.

Q How soon after he took them?

A A week, two weeks, three weeks, I don't know.

Q Did you report the plates as stolen when you found out he took them?

A No, I didn't need them anymore. I had transferred the registration from a car and I switched it under -- to my name. The plates were registered under my wife's name. And I left them. I thought they would expire and just forgot about them.

Q But you knew it was illegal to lend someone license plates?

A Yes.

Q Notwithstanding the fact that Mr. Tonani had them, you did not report them stolen to anyone?

A No.

Q Did Mr. Tonani pay you for the use of those license plates?

A No.

1
2 Q On the day in question, Mr. Esposito, that
3 June afternoon, did you see any transfer of money taking
4 place in the back seat of that car?

5 A No.

6 Q Do you think if you did, you would remember?

7 A Yes.

8 Q And at no time did you have a conversation
9 with that other gentleman?

10 A No.

11 Q Was that other gentleman bleeding?

12 A I didn't see any blood. No.

13 Q Did you observe either Mr. Tonani or Mr. -- the
14 other gentleman, Phillipe, strike that individual?

15 A No.

16 Q Did you at anytime see that individual getting
17 out of the car?

18 A No.

19 Q But the fact remains that your eyes were not
20 on that car for the whole 30 minutes, were they, or 20
21 minutes that they were in the shop?

22 A Right.

23 Q Did there come a time during that period of
24 time when that car was parked in that Oven that that car was
25 out of your sight?

1
2 A Few seconds at a time, perhaps. But no more
3 than that.

4 Q What do you mean by a few seconds of a time?

5 A The shop is a very large place. And there's
6 no -- if you're in, you have to see whatever is in there.
7 There's nothing blocking any view. The only place I can
8 go that I wouldn't have it in my sight would be into my
9 office and out of my office.

10 Q And you didn't do that?

11 A I must have went in and out to answer the
12 phone. But I didn't stand there.

13 Q When you answered the phone, did you have a
14 conversation with whomever called?

15 MR. DOUGHERTY: I object to any conversation.

16 THE COURT: Sustained.

17 Q Sir, I ask you this question: When you went
18 to answer the phone, did that take you out of the sight of
19 that car?

20 A Well, there are two phones. There's one in
21 the office and one outside in the shop.

22 Q Fine. Which phone did you answer, if you
23 recall?

24 A I don't recall.

25 Q By the way have you been appointed to the

New York City Police Department?

MR. DOUGHERTY: I am going to object.

THE COURT: Sustained. Don't answer.

MR. STELLA: May I have one moment just to look over this?

THE COURT: Yes, surely.

Q Mr. Esposito, I think you testified that at the time that car pulled in, it was your recollection that there weren't very many employees or possibly no employees in the shop?

A Yes.

Q Aside from yourself, of course; is that right?

A Well, I'm not sure. It's right that I'm not sure right.

Q You are not sure. Could it be that it was lunch time when that car pulled in and maybe everyone was out to lunch?

A No. They eat lunch in the shop anyway. It was much later.

Q It was much later than lunch time?

A Yes.

Q Can you give me an approximate time that you think it might have been?

A The best I can do is more than likely after

2 O'clock. Specifically --

Q After 2:00?

A Yes.

Q How about after 3:00?

A It's possible.

Q Of course, anything is possible.

MR. DOUGHERTY: I am going to object to that.

THE COURT: Sustained. Don't answer that question.

Q Can you tell me -- search your soul and your mind and try to come up with an answer.

MR. DOUGHERTY: I am going to object.

THE COURT: Sustained.

Q What time --

THE COURT: Ask him a question.

Q What time was it that that car pulled in?

A I don't know.

Q Can you remember what time it was that that car pulled out?

A I don't know.

Q But you do remember that it was there for 15 or 20 or 30 minutes?

A Yes.

Q You do remember that?

A Yes.

Q How do you know it was there 20 or 30 minutes?

A How do I know? In judging time, approximately.

As to the hour of the day, it's hard to tell.

When your're in business, one day may seem like an hour in the afternoon, and on other days when things are slow it might seem like 17 hours. It varies from day to day. But you can judge approximately a half hour.

I don't see it more than that.

That's the honest truth.

It could have been less. But pinning me down to the exact time, I can't do it.

Q Do you wear a watch?

A Sometimes.

Q Did you wear a watch that day?

A I don't remember.

MR. STELLA: I have nothing further, thank you.

THE COURT: Any redirect?

MR. DOUGHERTY: Yes, your Honor. But I would request a side bar before hand.

THE COURT: All right, come up.

(The following took place at side bar.)

MR. DOUGHERTY: Your Honor, I don't want to get on dangerous grounds and this might qualify it in

1
2 that category. But he was asked on cross examination
3 whether he had seen -- he had observed the defendant
4 Tenant with a weapon. And his answer was, I believe,
5 "I'm not sure."

6 MR. STELLA: On that day.

7 MR. DOUGHERTY: Whether it was this day or
8 another time. Now, I want to ask him on redirect
9 whether or not the defendant was ever in the shop with
10 a weapon when it was discharged.

11 THE COURT: No.

12 MR. STELLA: I'm going to object to that.

13 THE COURT: No, I couldn't permit that.

14 MR. DOUGHERTY: All right.

15 THE COURT: That is prejudicial.

16 MR. DOUGHERTY: Then I really don't have any
17 redirect.

18 THE COURT: That it?

19 MR. DOUGHERTY: Yes.

20 MR. HORLICK: If there is no redirect, I have
21 an application for a mistrial based on this man's
22 testimony.

23 In this man's testimony he doesn't corroborate
24 one word that Mr. Varga said. He can't indentify
25 Mr. Varga. It was very prejudicial, and there's an

1 inference left with the jury that the whole story
2 about riding around with handcuffs -- and this
3 witness didn't see the handcuffs -- but the failure
4 to place it on the date of June 19 keeps this jury
5 think that this is what happened with Stephen Varga
6 and he's corroborating the story. It's prejudicial
7 and I am making a motion for a mistrial.
8

9 MR. STELLA: I join in that application. I
10 think his testimony is highly inflammatory and
11 prejudicial to my client, and I would respectfully
12 request a mistrial.

13 MR. HORLICK: And I will add, Judge, one thing.

14 THE COURT: You say that's prejudicial as to
15 De Simone?

16 MR. HORLICK: He is charged in the fourth
17 count of the indictment. He's charged with the
18 extortion in the month of June.

19 THE COURT: I see. That's true.

20 MR. HORLICK: And in the 2500 material, the
21 man said he didn't know Stephen Varga and none of
22 this took place. And in his Grand Jury testimony
23 he testified in substance that this event took place.
24 But he wasn't asked if he could identify Stephen
25 Varga. And then the U. S. Attorney didn't ask him.

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Esposito-cross/Stella

1
2 And I think that's the reason I waited to cross
3 examine, after it was over, so we could put the
4 question directly to the man.

5 THE COURT: All right. The application for a
6 mistrial is denied.

7 MR. DOUGHERTY: Thank you, your Honor.

8 (End of side bar.)

9 THE COURT: Are you finished with this witness?

10 MR. DOUGHERTY: Yes.

11 THE COURT: You may step down, thank you.

12 (Witness excused.)

13 THE COURT: I think at this time we will
14 adjourn for lunch until 2:00. The jury may go to
15 lunch.

16 Come directly back to the jury room and we will
17 try to resume at 2:00 this afternoon. Please do
18 not discuss the case among yourselves or with anyone
19 else.

20 The jury may go out.

21 (Whereupon the jury retires from the courtroom)

22 (Luncheon recess taken.)

23
24 (Cont'd on next page.)
25

THE COURT: Ladies and gentlemen of the jury, the Court had a legal proceeding before. That is why you were delayed. We will proceed now.

MR. DOUGHERTY: The Government recalls Special Agent Virgil Young..

VIRGIL YOUNG, having been previously duly sworn by the Clerk of the Court, resumes the stand and testifies as follows:

THE COURT: You are reminded that you are still under oath, Mr. Young.

DIRECT EXAMINATION

BY MR. DOUGHERTY:

Q Agent Young, I believe you testified yesterday that you are a special agent with the Federal Bureau of Investigation?

A That is correct.

Q And that you are presently assigned to the New York office?

A That's right.

Q And will you tell us once again how long you have been assigned to that office?

A The New York office, about two and a half years.

Q Now, were you conducting an investigation on

1 those tapes could find that certainly Tonani made some
2 threats, but it is not clear on the tapes what the
3 threat was about -- or it is conceivable that the jury
4 could find that although there is no proof that there
5 was -- well, that the threats involved an attempt by
6 Tonani to obtain money which was owed to De Simone,
7 and in consequence if the jury found that there was
8 no sale of cocaine, that they could conceivably then
9 convict Tonani of an extortion.

10 Now if your Honor, if your Honor doesn't see
11 it --

12 THE COURT. I am very clear on what you are
13 saying. You are saying that the two must be connected
14 but the Court will not accept it in that fashion.

15 I am going to take each count separately
16 exactly as it is in the indictment, and the guilt or
17 innocence stands on each count separately. I will not
18 take a position where the jury must connect the sale
19 of the cocaine with the extortion, in other words to
20 find that Tonani is guilty on the extortion the Court
21 will not take that position. I won't, I definitely
22 won't take that position.

23 MR. HOWLICK: Judge, on the question of the
24 testimony of Mr. Esposito about the car and the oven
25 and the man with the handcuffs, I would ask your Honor

1 to consider charging that the jury cannot find, based
2 on his testimony, they cannot make the assumption that
3 that was Mr. Varga since he wasn't identified.

4 Nor can they make the assumption that it was on
5 June 19th.

6 Your Honor, I think that would be an inference
7 on an inference, and that circumstantial evidence under
8 the evidence rules, under the rules, they continue on,
9 this they cannot do. They cannot come to the
10 conclusion that it was Mr. Varga who was in the car on
11 June 19th and that that was corroborative of his
12 testimony.

13 I would ask the Court to charge specifically
14 that they cannot build that inference on that conclusion.

15 THE COURT: Well, you see, the issues that
16 yourself and Mr. Stella bring up are issues going
17 directly to the facts before the jury, and for the
18 Court to inject itself as to how the jury will handle
19 the facts of this case, this the Court will not do.

20 MR. HOBELICK: Judge, I think this is a question
21 of law that must be decided before the jury gets to
22 the question of fact. The question of law is can the
23 jury infer from the evidence and facts that are before
24 them that Mr. Varga was in the car, and I think that
25 they cannot in view of the fact that the man,

1 Mr. Esposito, did not testify that it occurred on
2 June 19th.

3 Similarly, I don't think they can infer it
4 happened on June 19th and therefore it was Mr. Varga,
5 especially since Mr. Varga never even testified about
6 the events at all.

7 I think it would be unfair to give the jury
8 this question as a question of fact and let them
9 assume that since Mr. Esposito was a witness called by
10 the Government and testified to seeing the man in the
11 car that therefore it was Varga and it was June 19th.

12 I think that would be allowing them to over-
13 extend their function as a jury. I think that is
14 strictly a question of law that must be decided.

15 THE COURT: You say it is a question of law and
16 then the first three words you start out with, the
17 first four words are that the jury infer. Now when
18 you say can they infer, then at that point it is a
19 question of whether or not on the facts there is an
20 inference that they can reasonably arrive at, and if
21 it is from the facts then I am not going to go into it
22 as a question of law.

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1 MR. HORLICK: Judge, the point I raised is they
2 have to draw the double inference. It is not a
3 single inference they may draw. *

4 THE COURT: You see, well, you assume that your
5 logic is the logic that they must use to arrive at
6 their conclusion, but I can't assume that. I can't
7 assume that your logic as to the facts will be the same
8 that will be used for purposes of their deliberations,
9 I can't do that.

10 MR. DOUGHERTY: I might add, your Honor, there
11 is nothing wrong with an inference being drawn upon an
12 inference as long as the circumstantial evidence
13 supports it --

14 MR. STELLA: The original inference --

15 MR. DOUGHERTY: As long as it supports that, and
16 that has to be strictly left to the jury.

17 MR. STELLA: Judge, may I have a moment with
18 co-counsel?

19 THE COURT: Yes, take your time.

20 (Mr. Stella then conferred with Mr. Horlick.)

21 MR. HORLICK: Judge those are the only requests.

22 MR. STELLA: Those are the only things that I
23 have.

24 THE COURT: Thank you.

25 MR. HORLICK: May we just make a record of the

1 exceptions to the charges that we have requested and
2 that your Honor has denied?

3 THE COURT: Yes, you may make that on the record,
4 definitely.

5 MR. HORLICK: Thank you, sir.

6 THE COURT: Now, Mr. Dougherty has given me a
7 copy of everything that is in evidence --

8 MR. DOUGHERTY: I have a Xerox copy of that
9 which I will turn over as soon as we go back out.

10 THE COURT: The only thing is that the Court was
11 going to, during the Charge, advise them as to every
12 item which is in evidence and which is available to them
13 and which they can use.

14 Now, as to the documents in evidence, do you want
15 them to take it in with them or to ask for it?

16 MR. STELLA: I would prefer, your Honor, if they
17 ask for it rather than just give it to them.

18 THE COURT: What is your thinking on this
19 evidence?

20 MR. DOUGHERTY: Well, they haven't the tapes.
21 That would be of no value.

22 THE COURT: The tapes, they can't. We won't
23 give them the tapes.

24 MR. DOUGHERTY: They have already seen the
25 transcripts. The other things like keys, the note,

1 they haven't seen that before. They haven't had an
2 opportunity to view those exhibits because I didn't ask
3 the Court for leave.

4 THE COURT. I think there are certain exhibits
5 they should be permitted to take in with them because
6 they have never seen them. They have never seen them.

7 MR. DOUGHERTY: That would be the Government's
8 position, your Honor.

9 MR. HORLICK: Judge, might I say that I
10 prepared a list of the evidence from the Clerk's
11 sheet, which I gave to Mr. Dougherty, and I just asked
12 him and he said it conforms except for the detail that
13 he wrote out as to what each piece of evidence is, so
14 I have no objection to it.

15 THE COURT. I would permit them to take the
16 glassene envelope containing the note, the five
17 photographs in the envelope, the two photographs of
18 latent fingerprints, one photograph of ink finger-
19 print and the card of Louis Tonani --

20 MR. DOUGHERTY: I might add that --

21 THE COURT: The chart of the blow-up --

22 MR. DOUGHERTY: Your Honor, the reverse side of
23 Exhibit 8, which was objected to by both counsel, I
24 have removed that from the photographs, so that they,
25

1 their duties and advised the defendant Louis Tonani
2 of his rights and what his rights were.

3 The Court finds that the defendant was at
4 first advised by Agent Sadowski and thereafter,
5 in the car, Agent Domroe advised the defendant, and
6 on the third occasion, at the headquarters of the
7 FBI, Agent Virgil Young and Agent Domroe attested
8 to a statement handed to the defendant an advice
9 of rights statements, which he did not sign and
10 the Court finds that in this situation, the defendant
11 was properly advised by the agents and this takes
12 into account the fact that the defendant, Louis
13 Tonani, denied ever having received any advice
14 of rights.

15 Of course, there are problems here as to the
16 state of mind of all of the parties involved in
17 this situation.

18 However, the Government will be permitted
19 to admit statements subsequently made by the
20 defendant Louis Tonani.

21 MR. DOUGHERTY: Thank you, your Honor.

22 MR. HORLICK: May I be heard briefly?

23 I waited until your Honor made a decision,
24 because my application is really addressed to the
25 discretion of the Court.

1 There is a statement that is contained in
2 the FBI report signed by Merrill Park dated November
3 7, 1974 wherein he attributes a statement to Mr.
4 Tonani where he states and it is in quotes and the
5 statement: 'You get nothing unless I walk. Give me
6 48 hours and I can give you 200 kis. of coke . I know
7 all the high people.'

8 I would ask the Court to suppress that
9 statement in the interests of justice. I do not
10 think there is anything in there that is of value
11 to this case. I do not believe it is a relevant
12 statement to the facts and circumstances of the
13 case, especially in view of the fact that the first
14 two counts dealing with the cocaine charges only
15 my client with that and not Mr. Tonani.

16 Additionally, I think that is not a credible
17 statement. I do not think that anybody believes
18 he could produce 200 kilos of cocaine but I do think
19 it would be highly inflammatory and prejudicial both
20 to Mr. Tonani and my client, especially since my
21 client is charged with the cocaine part of the
22 indictment.

23 I do not think it has relevance, it is not
24 a confession or anything to do with this case and
25 I do not think it has relevance except to be extremely

1 prejudicial and highly inflammatory.

2 THE COURT: Is this the statement made.
3 subsequently by Mr. Tonani?

4 MR. HORLICK: According to the note, after
5 he was advised of his rights, I think it would be.

6 THE COURT: It seems to be a highly
7 prejudicial statement, yes, Mr. Dougherty.

8 MR. DOUGHERTY: The matter of whether or not
9 it is a credible statement should be a matter that
10 is left to the jury.

11 THE COURT: As a question of fact, you say?

12 MR. DOUGHERTY: As a question of Mr. Tonani's
13 intent throughout, as it reflects back on the
14 earlier testimony, but also at the time of his
15 arrest.

16 As far as prejudicial value, all incriminating
17 statements, statements in the nature of confessions,
18 are incriminating.

19 The Second Circuit stated the test is not
20 whether or not it is incriminating, not even whether
21 or not it is prejudicial, but whether or not its
22 prejudicial nature so far outweighs its probative
23 value as to require it be kept from the minds of the
24 jury so as not to infect the jury.

25 I am willing to let the matter rest with your

1 Honor's decision, whatever that may be. But I
2 intended to elicit that statement because I think it
3 does have evidentiary value. If it is prejudicial,
4 it is prejudicial because it bears directly on the
5 issues in the case and not because it is an inherently
6 incredible statement.

7 I think the matter of what weight should be
8 attached to the statement is a matter clearly
9 committed to the discretion of the jury.

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1 MR. STELLA: If I may be heard on that,
2 your Honor. That statement, your Honor, about the
3 200 kilos of cocaine, does not really have any
4 bearing on the issues in this case since the
5 defendant Tonani is not and has not been indicted
6 for the sale of cocaine.

7 I think that the statement would have a
8 highly prejudicial effect, Defendant DeSimone and
9 since it was uttered by Tonani, I think your
10 Honor should take that into account in ruling on
11 whether or not it should be admitted.

12 I think the jury could reasonably infer that
13 if Tonani made that statement, that he could get
14 the 200 kilos of cocaine from the co-defendant
15 DeSimone.

16 I think it would definitely be prejudicial
17 insofar as his case is concerned, DeSimone's case
18 is concerned.

19 MR. DOUGHERTY: May I be heard on that,
20 your Honor?

21 THE COURT: Yes.

22 MR. DOUGHERTY: Let me address myself to
23 the last statement by counsel.

24 There are several cases that have held that
25 a statement which does not implicate a defendant,

1 a statement by a co-defendant which does not
2 implicate a defendant directly, is admissible
3 even though the defendant comes back and says that
4 the statement indirectly implicates him.

5 I can cite to the Court the case U.S. versus
6 Nasse, 432 F. 2d 1293, Seventh Circuit case.

7 The Court in this case held Bruton inapplicable
8 to the codefendant's statements that certain stolen
9 automobiles had been sold to dealers in Ohio, even
10 though other evidence established the defendant was
11 an Ohio dealer.

12 In United States versus Panipinto, 430 F 2d
13 613 Third Circuit case, 1970, Bruton was held not
14 to apply to a statement referring to, and then the
15 name of the party is left blank, referring to blank's
16 home in Jersey City, although the defendant himself
17 had testified he was from Jersey City.

18 The Court noted that Jersey City has a
19 populatio n of 275,000. "The fact that the defendant's
20 testimony came after the confession had been admitted
21 into evidence does not seem to have been critical
22 to the decision."

23 There is another case, United States versus
24 Sporano, 422 F. 2d 1095, Second Circuit case, 1970,
25 trial Court admitted evidence which showed 1, that

1 agents had arrested and conversed with the defendant's
2 co-indictees and 2, that the agent, subsequently
3 describes the defendant to two boys who said where
4 the defendant was. Defense counsel argued these
5 facts enabled the jury to infer that the agents
6 got a description of the defendants from the co-
7 indictees and therefore, was a violation of Bruton.
8

9 The Court found the conviction stating that
10 such an inference would have to be clear and practically
11 inescapable and that here the jury could infer the
12 agents got their description elsewhere.

13 Unless the Court is willing to find the
14 inescapable conclusion of the defendant Tonani's
15 remark that Mr. DeSimone was a business partner of
16 defendant Tonani, I think that the statement ought
17 to be allowed to go to the jury.

18 I think Mr. DeSimone is not mentioned and
19 Mr. Tonani makes no mention of the circumstances
20 pertaining to the indictment. He merely tells the
21 agents that, "I can get it". It is in futuro, "I can
22 get coke for you in 24 hours", whatever the statement
23 says. I think it is a neutral statement as far as the
24 defendant is concerned. I think Bruton is not
25 applicable here.

There is one other point I want to bring up.

1 In one of the telephone conversations between
2 the defendant and Tonani and Stephen Varga in
3 September, which I intend to play in its entirety
4 for the jury, Mr. Tonani says something to the effect
5 "Remember the stuff that got you in trouble the first
6 time, these five ounces."

7 I do not know if he means the term "ounces."
8 He says, "Well, I may have a deal for you after you
9 pay up on your debt where you can make some money,
10 but instead of 5, I can get 1400."

11 Now certainly the jury is not going to be
12 blind to the fact Mr. Varga originally got involved
13 with the defendants because of a purchase of 5 ounces
14 of cocaine. Unless the Court is willing to strike
15 the reference to the telephone conversation by the
16 defendant himself to the fact that he may have
17 access to larger quantities of cocaine, which I
18 think might be a fair inference from the context of
19 the conversation and all the other evidence, then we
20 may have to come to that.

21 We may have to strike it from the telephone
22 conversation. I think it bears directly on the issues.
23 I disagree with Mr. Stella. I think anything that
24 reflects on the defendant's state of mind regardless
25 of the fact that he is not indicted for the narcotics

1 transaction, he was a party to a collection process
2 involving a debt that arose allegedly from narcotics
3 transaction.

4 I think it is probative. I think its
5 prejudice is in view of its probative value, not in
6 spite of it.

7 I think the argument that its inflammatory
8 nature exceeds its probative value is without sufficient
9 force.

10 I would ask that the Court allow the entire
11 statement to be admitted.

12 THE COURT: Yes, Mr. Stella?

13 MR. STELLA: Judge, counsellor makes an
14 effective argument except that the cases that he
15 cites are not Second Circuit cases, at least I do
16 not think they were.

17 MR. DOUGHERTY: One case is a Second Circuit
18 case.

19 MR. STELLA: Secondly, this case that we
20 are dealing with now, Judge, must stand on its
21 own fours and since there is an allegation by the
22 United States Government that DeSimone sold cocaine,
23 it is my opinion, Judge, strictly an opinion, that
24 the jurors' reasoning is inescapable, and that is
25 that if Tonani can get 200 kilos of cocaine, he has

1 to go to the guy sitting down next to him over there
2 and that is the co-defendant, DeSimone. If that is
3 the test, I submit to your Honor, that is what the
4 jury is going to think.

5 THE COURT: If that is what the facts show,
6 that is what the jury will have in front of it.

7 MR. STELLA: Of course there are no facts
8 here, there is no proof that Tonani -- Tonani did
9 not say, "I can get 200 kis of coke from DeSimone."
10 All he said is, "I can get 200 kis of coke" but the
11 jury thinks he will get them from DeSimone.

12 I think that conclusion is inescapable.

13 If that is the test, I submit to your Honor
14 that that test should be applied here, that there
15 is an inescapable conclusion that can be drawn
16 from Tonani's remarks, and that the inescapable
17 conclusion that Tonani will get the cocaine from
18 DeSimone, that it is unfair to the defendant DeSimone
19 to permit a statement like that on the record.

20 MR. DOUGHERTY: Your Honor, we are arguing
21 essentially the right of confrontation. I fail to
22 see how the defendant DeSimone can argue his right
23 of confrontation is being denied him by the admission
24 of this statement.

25 Counsel has indicated that I have not cited

1 him Second Circuit cases. I will proceed to do that
2 now in United States ex rel, Nelson V. Folick, 430 F.
3 2d 1055, a case involving a deleted confession
4 where reference to the defendant by a co-defendant
5 was deleted. The defendants argue that although the
6 deleted confession did not itself refer to the
7 defendant, other testimony had served to fill in the
8 blanks and tie the defendant to the confession.

9 Faced with these allegations, the Circuit
10 Court nevertheless refused to apply Bruton. The
11 Court noted that the witnesses connecting the
12 defendant with the confession could be cross
13 examined.

14 I submit that in a sense, that is the argument
15 by counsel in this case and there has been adequate
16 cross examination from the state of the record and
17 I think the circumstances have been faced with
18 exactly this kind of argument and has been rejected.

19 MR. STELLA: No, Judge, in this particular
20 case the person making the admission cannot be
21 cross examined by the other co-defendant. If Tonani
22 is making the admission, if Tonani is making the
23 statement, how can counsel for DeSimone cross
24 examine Tonani on this statement? He cannot.

25 THE COURT: Well it is not a question of that,

1 but he says you are arguing right of confrontation
2 and it would appear that might be so.

3 MR. HORLICK: I think that argument is clearly
4 limited. I do not think the right of confrontation
5 is the heart of this matter. My feeling about the
6 case is that with respect to the first two counts,
7 the possession and the distribution of cocaine, this
8 is a very close case. There is no physical evidence.
9 It is the testimony of Juanita Hernandez and Stephen
10 Varga.

11 Of course it will be up to the jury to decide
12 what is the state of their credibility. I would
13 suggest to the Court, this is not a clearcut case of
14 either possession or intent or distribution of the
15 drug.

16 I think that if this statement comes in,
17 that that close question may be overwhelmed by the
18 fact Mr. Tonani stated he can get 200 kilos of
19 cocaine. We are involved in a case in which there
20 is an allegation of 5 ounces of cocaine and now we
21 are getting to in excess of 400 pounds of cocaine.

22 I think the jury will be overwhelmed by that
23 statement and even if they do not want to believe
24 that there were 5 ounces, that they will be afraid
25 to do anything in view of the statement involving

1 400 pounds or 200 kilos.

2 It is true I will probably not have the
3 opportunity to cross-examine Mr. Tonani on his
4 state of mind or why he made the statement or his
5 basis, and whether it is true or not, whether he
6 could get the cocaine.

7 Making the statement in its entirety is
8 entirely prejudicial, I think to both defendants,
9 and I do not think it has any relation to this case
10 except to take from the jury what I consider to be
11 a very close question.

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2 MR. HORLICK: (continuing) I think that was
3 at this statement the case will go to the jury on
4 the facts and on the testimony that that we have. I
5 think that with it it will have more prejudice
6 than we have evidence of any cocaine in this case.
7 That is the reason I move in your Honor's discretion,
8 to suppress it.

9 MR. DOUGHERTY: Your Honor, I think the
10 statement can very well cut both way. The fact
11 that Mr. Tonani mentions he can get large quantities
12 of cocaine and he knows all the big people, but
13 also fails to incriminate the defendant DeSimone
14 at any time during the making of the statement,
15 certainly puts that statement in a position where
16 it is not inherently prejudicial. I think it further
17 highlights the fact that Bruton is not applicable as
18 far as the defendant DeSimone is concerned, and if
19 the Court wishes to instruct the jury at the time
20 the statement comes in that the statement is not
21 under any circumstances to be considered either as
22 evidence against the defendant Tonani regarding his
23 possible involvement with narcotics, or as evidence
24 against the defendant DeSimone on the charges
25 before it, I would have no objection to such an
instruction by the Court.

1 However, if the Court feels that Bruton is
2 implicated here by the statement, then obviously
3 such an instruction would fail to meet the minimal
4 standards of due process and might raise an appellate
5 issue, but it is the Government position Bruton is
6 not implicated in it by the statement and I do not
7 think it is an inescapable conclusion when the
8 defendant speaks about cocaine he is speaking about
9 cocaine from the defendant DeSimone.

10 In the absence of circumstances making it an
11 inescapable conclusion, I would take the position that
12 Bruton is not available to keep the statement out.

13 THE COURT: Mr. Stella, do you have anything
14 further?

15 MR. STELLA: No, Judge, I think I made my
16 position on the matter clear.

17 THE COURT: The Court feels that the statement
18 may be received against the defendant Louis Tonani,
19 but the jury should be instructed that as to the
20 defendant Joseph DeSimone, it is not to be taken
21 as anything he said or anything which is to be taken
22 against him for purposes of this case and for
23 purposes of their deliberations.

24 But the Court will admit the statement as to
25 the defendant Louis Tonani and likewise, the statement

1 which is in the tape to the extent of some 1400
2 ounces of cocaine, something of that nature.

3 MR. DOUGHERTY: Something of that nature.

4 THE COURT: That may also be admitted as
5 statements of the defendant Tonani for whatever
6 weight or whatever value the jury wishes to give to
7 them as to the position of this defendant.

8 MR. STELLA: Thank you, your Honor.

9 THE COURT: Anything further?

10 MR. DOUGHERTY: No, I do not think so, your
11 Honor.

12 THE COURT: I guess we had better bring the
13 jury out.

14 MR. DOUGHERTY: May I have a five minute
15 recess?

16 THE COURT: We will take a five minute
17 recess.

18 (Whereupon a recess was taken until 10 minutes
19 after 12 Noon.)

20 (The jury took its place in the jury box.)

21 THE COURT: Ladies and gentlemen of the jury,
22 most of the morning the Court has been engaged in
23 a hearing on this case. There are certain legal
24 preliminaries the Court has had to go over and that
25 is why you did not come out earlier.

1 I regret that, but we will just go forward
2 now.

3 You may proceed, Mr. Dougherty.

4 MR. DOUGHERTY: The Government recalls
5 Special Agent Merrill Park.

6 (Agent Merrill Park resumed the witness stand.)

7 THE COURT: You are reminded you are still under
8 oath, Mr. Park.

9 DIRECT EXAMINATION

10 BY MR. DOUGHERTY:

11 Q Agent Park, I believe you testified you are a special
12 agent with the Federal Bureau of Investigation.

13 A That is right.

14 Q And during the month of November, 1974, would
15 you tell us what office you were assigned to?

16 A I was assigned to the New York office of the
17 Federal Bureau of Investigation.

18 Q And in the early part of the month, were you
19 engaged in an ongoing investigation at that time?

20 A Yes.

21 Q Can you recall whether or not you were
22 engaged in the performance of your official duties on
23 November 6, 1974?

24 A Yes, yes.

25 Q Do you remember what you did on that date?

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